

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**ANGEL DAVID MORALES
VALLELLANES,
Plaintiff,**

v.

**JOHN POTTER, UNITED STATES
POSTMASTER GENERAL, ET ALS.,
Defendants.**

CIVIL NO. 97-2459 (GAG)

**DAMAGES BASED ON
RETALIATION AND
DISCRIMINATION; PROHIBITED
PERSONNEL PRACTICES;
UNFAIR LABOR PRACTICES;
BREACH OF COLLECTIVE
BARGAINING AGREEMENT**

**TRIAL BY JURY IS HEREBY
REQUESTED**

OPPOSITION TO DEFENDANTS' REPLY

COMES NOW, plaintiff Angel David Morales-Vallellanes through his legal counsel and very respectfully inform this Honorable Court:

1. Defendants' states that its reply was filed as a result of plaintiff's non-compliance with: a) F.R.C.P. 33 and 34; b) with Court's orders for the plaintiff to answer the long overdue Defendants' Interrogatories and Request for Production of Documents.

Also Defendants states that its Motion to Compel did not mention sanctions under F.R.C.P.37.

2. Defendants Interrogatories and Request for Production of Documents were filed on April 27, 2004 during almost a year and until the Status Conference held on February 14, 2005 Defendants did not mentioned and/or requested its answers. Both parties had no recollection of the discovery as this was mentioned ten (10) months after. It was not until the status conference held on February 14, 2005 that Defendants recalled the interrogatories and

requested its answer. This Honorable Court ordered on February 14, 2005 to answer said interrogatories and provide the transcripts of the depositions taken. The Motion to Compel filed by Defendants' on April 15, 2005 was regarding the answers given by Plaintiff, and it is precisely for said action that Local Rule 26 (b) applies. Moreover, the objections to the answers given as noncompliance with F.R.C.P.33 and F.R.C.P. 34 are also matters to be considered in the spirit of Local Rule 26(b). Notwithstanding Defendants' allegation that its "Motion to Compel did not mention sanctions under F.R.C.P." back in April 27, 2004 (docket no. 205) in its response in Opposition to Plaintiff's Motion to Compel said party requested sanctions to Plaintiff.

3. Defendants' objections to the answers of Interrogatories are first to be discussed between the parties as stated in Rule 26 (b). Defendants did not presented a single fact to sustain that "Plaintiff's opposition incorrectly relies and misplaces Local Rule 26(b)."
4. Contrary to Defendants' position this Honorable Court has no judicial discretion as the first paragraph of Local Rule 26 (b) states as follows:

"The judicial officer shall not consider any discovery motion that is not accompanied by a certification that the moving party has made a reasonable an good-faith effort to reach an agreement with opposing counsel on the matters set forth in the motion. An attempt to confer will not suffice."

WHEREFORE, it is respectfully requested from this Honorable Court to take notice of the above.

RESPECTFULLY SUBMITTED.

I HEREBY CERTIFY that on April 25th, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the

following: **Fidel A. Sevillano-Del Río, Esq.**, Assistant U.S. Attorney, Federico Degetau Federal Build., 150 Carlos Chardón Av., Hato Rey, Puerto Rico 00918.

S/MIGUEL E. MIRANDA-GUTIERREZ
MIGUEL E. MIRANDA-GUTIERREZ, ESQ.
ATTORNEY FOR PLAINTIFF
PMB 132, 500 Muñoz Rivera Local 15,
San Juan, Puerto Rico 00918-3349
TEL: (787) 282-0022
FAX: (787) 751-0883